

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

ISSAC MCDONALD,<sup>1</sup>

Plaintiff,

-against-

9:08-CV-1036 (LEK/RFT)

BRIAN FISCHER, Commissioner, New  
York State Department of Correctional  
Services; EDWIN ELFELDT,  
Coordinator, Sex Offender  
Counseling and Treatment Program;  
JOSEPH T. SMITH, Superintendent,  
Shawangunk Correctional Facility;  
NEVILLE ANDREWS, Deputy  
Superintendent, Programs, Shawangunk  
Correctional Facility; ED RUDDER,  
Senior Counselor/Psychologist;  
DICK FITCHETT, Senior Counselor;  
BRIAN McCULLOUGH, Senior  
Counselor; JOHN TOWNLEY,  
Corrections Counselor/LMSW; and  
STACEY BODE, Clinical Social  
Worker II,

Defendants.

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**DECISION and ORDER**

This matter comes before the Court following a Report-Recommendation filed on November 9, 2011 by the Honorable Randolph F. Treece, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(c) of the Northern District of New York. Report-Rec. (Dkt. No. 161).

Within fourteen days after a party has been served with a copy of a Magistrate Judge's

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<sup>1</sup> Issac McDonald is the only remaining Plaintiff in this matter. The caption therefore includes only him and the remaining Defendants.

Report-Recommendation, the party “may serve and file specific, written objections to the proposed findings and recommendations,” FED. R. CIV. P. 72(b), in compliance with L.R. 72.1. No objections have been raised in the allotted time with respect to Magistrate Judge Treece’s Report-Recommendation. Furthermore, after examining the record, the Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice.

Accordingly, it is hereby:

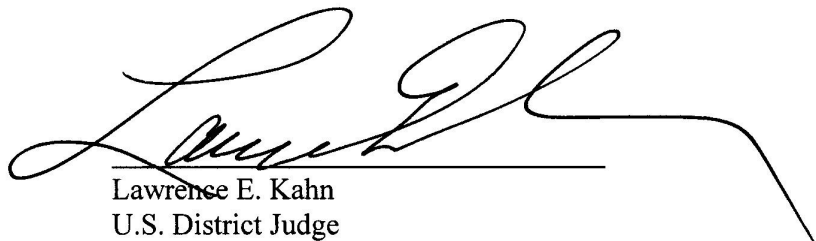
**ORDERED**, that the Report-Recommendation (Dkt. No. 161) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

**ORDERED**, that Defendants’ Motion to Dismiss pursuant to FED. R.CIV. P. 37(b) and 41(b) (Dkt. No. 152) is **GRANTED** and this action is **DISMISSED**; and it is further

**ORDERED**, that the Clerk serve a copy of this Order on all parties.

**IT IS SO ORDERED.**

DATED: January 05, 2012  
Albany, New York



Lawrence E. Kahn  
U.S. District Judge